Supreme Court, U.S.
FILED

991812 MAR 13 2000

OFFICE OF THE CLERK

NO. _____

In the
Supreme Court of the United States

FRANCIS J. PUMPER,

Appellant Pro Se,

vs.

OFFICER PAUL BARTZ, Perjurer,

Respondent.

PETITION FOR WRIT OF MANDAMUS
(CRIMINAL COMPLAINT)

FRANCIS J. PUMPER
4 Juniper Curve
Landfall, MN 55128
(651) 730-7723

94 pp

RESPONDENTS

BOB WEISBROD
League of Minnesota Cities
145 University Avenue West
St. Paul MN 55103
(651) 281-1200

GRAY & MALACKO
1030 Minnesota Building
46 East Fourth Street
St. Paul MN 55101
(651) 223-5175

JUDGE DAVID S. DOTY
300 South Fourth Street
Minneapolis MN 55415

REGNIER & FLYNN
2100 Piper Jaffray Plaza
444 Cedar Street
St. Paul MN 55101
(651) 290-6500

PAUL W. BARTZ
2100 Piper Jaffray Plaza
444 Cedar Street
St. Paul MN 55101
(651) 223-5175

I, F.J. Pumper, a pro se petitioner ask the United States Supreme Court to exercise its appellant authority and review civil 98-983 and appeal no. 99-1560 for judicial misconduct, failure to enforce perjury laws, to enforce a clear right in plaintiff of access to a jury trial and direct district judge David S. Doty to restore complainant rights and privileges which have been illegally deprived. Reverse district courts award of qualified and official immunity to respondent, Officer Paul W. Bartz who has in fact acted in bad faith and malice and committed perjury in the final moments of discovery, in his affidavit of October of 1998 in civil case 98-983. Civil Case no. 98-983 is a personal injury suit involving Constitutional Rights, The Fourth Amendment and Civil Rights violations. The arguments are well documented in briefs, and reply briefs all the way through the appellant appeal process 99-1560 in the Eighth Circuit Court of Appeals and the District Court records of 98-983. Petitioner asks The United States Supreme Court to overturn erroneous, criminal, unconstitutional orders issued by District Judge David S. Doty, and Eighth Circuit judges Bowman, Fagg, and Murphy. Pro se petitioner asks that the Justice Department investigation be completed before anyone issues a premature decision.

Pro se petitioner asks the Department of Justice to investigate **Criminal conspiracy to conceal a crime (perjury). Criminal conspiracy to undermine the Constitution, Fourth Amendment, and Civil Rights laws.**

The attorneys for both the plaintiff and defendant in civil case no. 98-983 are guilty of withholding exculpatory evidence and material facts, planting false statements in the record, not following chain of evidence and misrepresentation of plaintiff by plaintiff's counsel Gray & Malacko who failed to follow local rules of withdrawal of counsel. Voluntary and malicious involvement of defendant's counsel Regnier & Flynn in criminal conspiracies mentioned above.

Pro se petitioner asks the Department of Justice to investigate the League of Minnesota Cities involvement in above mentioned conspiracies to include financing of conspiracy.

NOTICE OF INTENT

Pro se petitioner F.J. Pumper, gives fair warning that I will not repeat the same mistake made with the Eighth Circuit Court of Appeals in naturally assuming that Federal Judges will obey perjury laws and not trample on the Constitution and Civil Rights laws. Perjury in a Federal court is a serious crime in front of any other judges than Doty, Bowman, Fagg, and Murphy. Petitioner will not wait for any decisions, but will post this Criminal complaint on the internet. This is not 1980 or 1990 I will inform the public without asking a local newspaper to print their edited version of this story.

My understanding of serving eleven copies to the Clerk of the United States Supreme Court and if one copy to the Department of Justice is sufficient then I will serve only one copy to all respondents. A clerical error is not enough to deny a **pro se petitioner's** Writ of Mandamus. This Criminal

complaint (Writ of Mandamus) should be allowed to stand on its merit.

Petitioner means no disrespect to anyone, but asks everyone involved to obey the law.

Dated: 3/10, 2000

/s/

Francis J. Pumper
4 Juniper Curve
Landfall, MN 55128

Subscribed and Sworn to before me this 10th day of March, 2000

/s/

Notary Public
Lisa Ann Clark
Notary Public - Minnesota
My Commission
Expires Jan. 31, 2005

No. _____

In The

Supreme Court of the United States

FRANCIS J. PUMPER,

Appellant Pro Se,

vs.

OFFICER PAUL W. BARTZ,

Respondent.

APPENDIX TO PETITION
FOR WRIT OF MANDAMUS
(CRIMINAL COMPLAINT)

FRANCIS J. PUMPER
4 Juniper Curve
Landfall MN 55128
(651) 730-7723

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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Francis Pumper,
Plaintiff,

v.

Officer Paul Bartz,
Defendant.

Civil No. 98-983
(DSD/JMM)

ORDER

This matter is before the court on the motion of plaintiff Francis Pumper for reconsideration of the court's December 15, 1998, Order granting the motion of defendant Officer Paul Bartz for summary judgment and dismissing this case with prejudice. As an initial matter, the court quotes District of Minnesota Local Rule 7.1(g):

> Motions to reconsider are prohibited except by express permission of the Court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and responses to such requests, shall be made by letter to the Court of no more than two pages in length, a copy of which must be sent to opposing counsel.

While plaintiff has adhered to the two page limit, sent a copy of his motion to opposing counsel, and set forth his belief that defendant Bartz withheld information and committed perjury as the basis for his motion, he has failed to make a letter

request to the court prior to making his motion. Plaintiff's failure to follow all the dictates of Local Rule 7.1(g) is a sufficient reason to deny the relief he seeks.

Even if the court were to overlook this procedural infirmity, plaintiff has failed to show compelling circumstances why the court should reconsider its Order dated December 15, 1998. In his motion, plaintiff accuses Officer Bartz of filing a false police report and making false statements in an October 12, 1998, affidavit. The civil action which the court dismissed in its December 15, 1998, Order brought claims against Officer Bartz for violations of plaintiff's civil rights and various state law tort claims. All of the claims were based on Officer Bartz's allegedly unlawful use of excessive force on plaintiff during a traffic stop. The court found that Officer Bartz was entitled to qualified and official immunity; therefore, Officer Bartz's motion for summary judgment dismissing plaintiff's claims was granted. Nothing now presented to the court in plaintiff's motion and supporting materials changes this result.

While neither qualified nor official immunity allows Officer Bartz to commit perjury or protects him from the consequences of committing such a crime, this civil action is not the forum for plaintiff to make his accusations. The court recognizes the challenges presented to plaintiff in representing himself in this matter, but may not offer him legal advice as to the proper avenue to follow in making his accusations. Therefore, based on a review of plaintiff's newly submitted materials and the file and record in this matter, **IT IS HEREBY ORDERED** that plaintiff's motion to reconsider is

denied.

Dated: January 4, 1999

/s/

David S. Doty, Judge
United States District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Francis Pumper, Civil No. 98-983 (DSD/JMM)

Plaintiff,

v.

ORDER

Officer Paul W. Bartz,

Defendant.

Earl P. Gray, Esq. and Gray & Malacko, 46 Fourth Street East, Suite 1030, St. Paul, MN 55101, counsel for plaintiff.

Pierre N. Regnier, Esq., Joseph E. Flynn, Esq. and Jardine, Logan & O'Brien, 2100 Piper Jaffray Plaza, 444 Cedar Street, St. Paul, MN 55101-2179, counsel for defendant.

This matter is before the court on the motion of defendant Officer Paul Bartz for summary judgment. Based on a review of the file, record, and proceedings herein, and for the reasons stated, the court grants defendant's motion.

BACKGROUND

Plaintiff Francis Pumper is a resident of Landfall, Minnesota. Defendant Paul Bartz is a police officer employed by the City of ...

Filed 12-15-98
Francis E. Dosal, Clerk
Judgment Ent'd. 12-15-98
Deputy Clerk's Initials__

Exhibit A for opposing motion to strike dated 7-4-99

...arrest Pumper. Even under Pumper's version of the arrest, Officer Bartz may have "reasonably but mistakenly" concluded that probable cause existed. As a result, plaintiffs section 1983 claim based on unlawful arrest is defeated by Officer Bartz's qualified immunity. Thus, the court also grants summary judgment for Officer Bartz as to this part of the Pumper's section 1983 claim against him.

C. State Claims

Pumper asserts that Officer Bartz committed the state law torts of assault and battery, intentional infliction of emotional distress, false imprisonment, and negligence, and also committed acts constituting abuse of process by "initiating a criminal prosecution to gain advantage in a prospective civil proceeding." Complaint (Docket No. 1) ¶ 28. Officer Bartz claims that he is entitled to official immunity. This is a question that may be appropriately resolved on summary judgment. Reuter v. City of New Hope, 449 N.W.2d 745, 751 (Minn. Ct. App. 1990). Under Minnesota law, the common law doctrine of official immunity "protects from personal liability a public official charged by law with duties that call for the exercise of judgment or discretion unless the official is guilty of a wilful or malicious wrong." Rico v. State, 472 N.W.2d 100, 107 (Minn. 1991). "Malice means nothing more than the intentional doing of a wrongful act without legal justification or excuse, or, otherwise stated, the willful violation of a known right." Id. (citation omitted). To act with malice, the police officer "must have reason to know his act is prohibited."

Greinier v. City of Champlin, 27 F.3d 1346, 1355 (8th Cir. 1994). The purpose of official immunity is to protect "public officials from the fear of personal liability that might deter independent action and impair effective performance of their duties." Elwood v. Rice County, 423 N.W.2d. 671, 678 (Minn. 1988).

The duties of police officers generally call for the exercise of significant judgment and discretion. See State v. City of Mounds View, 518 N.W.2d 567, 569-70 (Minn. 1994). Consequently, official immunity is provided to police officers because "the community cannot expect its police officers to do their duty and then to second-guess them they attempt conscientiously to do it." Pletan v. Gaines, 494 N.W.2d 38, 41 (Minn. 1992).

The willful or malicious wrong exception to official immunity requires that the police officer have reason to know that the challenged conduct is prohibited. Rico, 472 N.W.2d at 107. Pumper may not rely on "bare allegations of malice," but must present specific facts evidencing bad faith. Reuter, 449 N.W.2d at 751 (citing Harlow, 457 U.S. at 817). In this case, Officer Bartz was acting in a discretionary manner when he pulled Pumper over and subdued him during the ensuing events. Pumper has presented no evidence that Officer Bartz acted in bad faith or with malice. Officer Bartz's conduct was not prohibited, and even if it were there is no evidence that he knew what he was doing was against the law. While Pumper alleges malice, he has failed to proffer evidence in support of his claim. Summary judgment in favor of Officer Bartz on

Pumper's state law tort claims is therefore appropriate.

CONCLUSION

After carefully reviewing the file, record, and proceedings herein, the court concludes that summary judgment in favor of Officer Bartz on all of Pumper's section 1983 and state law tort claims should be granted. Therefore, **IT IS HEREBY ORDERED** that:

1. The motion of defendant Paul W. Bartz for summary judgment is granted;

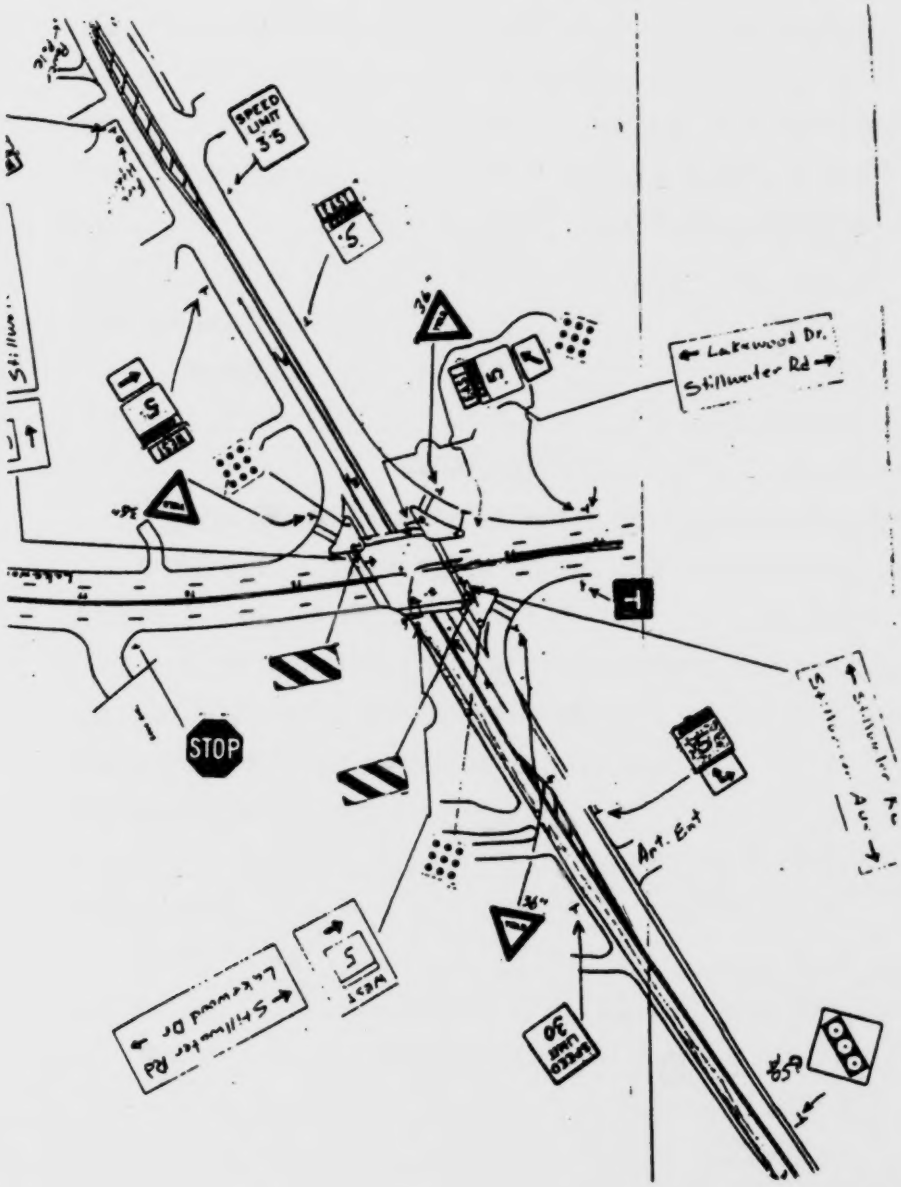
2. This case is dismissed with prejudice.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: December 15th, 1998

/s/

David S. Doty, Judge
United States District Court



BEST AVAILABLE COPY

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 99-1560MNMI Civil 98-983

Francis J. Pumper, Appellant,	*	Appeal from the United States District Court for the District of Minnesota
vs.	*	
Paul Bartz, Officer, Appellee.	*	

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.
(5172-010199)

November 1, 1999

A true copy.

ATTEST: /s/
CLERK, U.S. COURT OF APPEALS
EIGHTH CIRCUIT

MANDATE ISSUED
FILED 12-22-99
FRANCIS E. DOSAL, CLERK
JUDGMENT ENTD _____
DEPUTY CLERK DW

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

NO. 99-1560

Francis J. Pumper,	*	
Appellant,	*	Appeal from the United
v.	*	States District Court for
	*	the District of
Minnesota.		
Paul Bartz, Officer,	*	
Appellee.	*	

Submitted: October 29, 1999
Filed: November 1, 1999

Before BOWMAN, FAGG, and MURPHY, Circuit Judges.

PER CURIAM.

Francis J. Pumper appeals the district court's[1] grant of summary judgment to police officer Paul W. Bartz in

[1]The Honorable David S. Doty, United States District Judge for the District of Minnesota.

Pumper's 42 U.S.C. § 1983 and state tort action arising out of his arrest for traffic violations and obstruction of justice. After de novo review of the record and the parties' submissions, we conclude summary judgment was proper for the reasons stated by the district court. We dismiss Bartz's motion to strike as moot, see Stewart v. Professional Computer Ctrs., Inc., 148 F.3d 937, 940 n.3 (8th Cir. 1998), and we deny Pumper's motion to recuse the district judge. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 99-1560MNMI		FILED
	*	DEC 13 1999
Francis J. Pumper,	*	MICHAEL GANS
Appellant,	*	Clerk of Court
vs.	*	
	*	Order Denying Petition
Paul Bartz,	*	for Rehearing and for
Appellee.	*	Rehearing En Banc
	*	

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.
(5128-010199)

December 13, 1999

Order Entered at the Direction of the Court:

/S/

Clerk, U.S. Court of Appeals, Eighth Circuit

U.S. COURT OF APPEALS - EIGHTH CIRCUIT

FRANCIS J. PUMPER,
PRO SE PLAINTIFF,

V.

NOTICE OF APPEAL

OFFICER PAUL BARTZ,
DEFENDANT.

CIVIL NO. 98-983 (DSD/JMM)

APPEAL JUDGEMENT BY DAVID S. DOTY, JUDGE OF DECEMBER 15, 1998 GRANTING DEFENDANT PAUL W. BARTZ SUMMARY JUDGEMENT.

APPEAL ORDER BY DAVID S. DOTY, JUDGE DENYING PLAINTIFF'S MOTION TO RECONSIDER DATED JANUARY 4, 1999.

PLAINTIFF HAS BEEN MISREPRESENTED BY ATTORNEYS GRAY & MALACKO AND COUNSEL FOR PLAINTIFF HAS WITHDRAWN.

Date: January 8, 1999

Signed: /s/
Francis J. Pumper

Subscribed and Sworn to before me this 8th day of January, 1999.

/s/
Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000

Filed 1-8-99
Francis E. Dosal, Clerk
Judgment entd
Deputy Clerk bw

GRAY & MALACKO
Law Offices
Suite 1030 Minnesota Building
46 East Fourth Street
St. Paul Minnesota 55101
(651) 223-5175
Fax (651) 223-5179

September 17, 1998

Joseph E. Flynn
Attorney at Law
2100 Piper Jaffray Plaza
444 Cedar St.
St. Paul, MN 55101-2160

RE: Pumper v. Bartz

Dear Mr. Flynn:

I have received your letter dated September 10, 1998 giving notice of your intention to move for summary judgment. It will be our intention at that time to bring a motion to amend the complaint to add punitive damages as a form of relief. Additionally, a recent decision of the Minnesota Supreme Court from August 6, 1998, State of Minnesota v. Beverly Ann Varnado is on point with the instant case in holding that "The inability of a minor traffic violator to produce a driver's license in and of itself is not a reasonable basis to require the driver to sit in the back of his squad car. We will not allow officers to contravene the reasonableness required in the Fourth Amendment simply by requesting that a person sit in a squad car."

Very truly yours,

/s/

Richard J. Malacko

RJM/cr

U.S. COURT OF APPEALS - EIGHTH CIRCUIT
APPEAL NUMBER 99-1560
DISTRICT COURT CASE NO/CV 98-983, DSD/JMM

FRANCIS J. PUMPER,
PRO SE APPELLANT

v.

PAUL BARTZ,
APPELLEE.

Notice of Motion and Motion requesting Removal of Judge

Motion requesting removal of U.S. District Judge David S. Doty from CV-98-983 Appeal #99-1560 as per LR 83.12

cc:

Gray & Malacko
Suite 1030 Minnesota Building
46 East Fourth Street
St. Paul, MN 55101

Defendant's Counsel
Jardine, Logan & O'Brien, P.L.L.P.
2100 Piper Jaffray Plaza
444 Cedar Street
St. Paul, MN 55101

Clerk of United States District Court
United States District Court
202 US Courthouse

300 S. Fourth Street
Mpls, MN 55415

Clerk of Eight Circuit Court of Appeals
1114 Market Street
St. Louis, Missouri 63101

A. Judge David S. Doty, who is a member of the Rules Committee of the United States District Court for the district of Minnesota, has in fact, weighed evidence, made credibility determinations at summary judgement stage.

B. Judge Doty's personal, fictional, opinion and account of events dated June 18, 1997 was used as his basis for order and judgement dated December 15, 1998.

C. Judge Doty's order denying motion to reconsider partially based on pro se plaintiff's violation of Local Rule 7.1. Failing to acknowledge perjury by defendant Bartz, dismissing case with prejudice, without compliance of plaintiff's counsel Gray & Malacko to LR 83.7 (a & c).

D. Judge Doty's refusal to acknowledge his order of December 15, 1998 was based on false testimony, perjury committed by defendant Maplewood Police Officer, Paul W. Bartz represented by counsel Pierre N. Regnier & Joseph E. Flynn.

Signed: /s/
Francis J. Pumper

Subscribed and Sworn to before me this 1st day of June, 1999.

/s/

Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000

U.S. COURT OF APPEALS-EIGHT CIRCUIT
APPEAL NUMBER 99-1560
DISTRICT COURT CASE NO. (CIVIL 98-983 DSD/JMM)

FRANCIS J. PUMPER,
Pro Se Appellant,
v.

PAUL BARTZ,
Appellee.

AFFIDAVIT OF
Witness on Witness List
Roger Bilderback

Sworn Testimony of Roger Bilderback

I, Roger Bilderback, being first duly sworn on oath deposes and states as follows:

1. That I am a witness and I am aware of being on the witness list of a civil matter involving Maplewood Police Officer Bartz and Francis J. Pumper.

2. That in the early month of June 1997, I witnessed Officer Bartz following Frank and Linda Pumper in their black station wagon. They stopped to talk with me, and the policeman for no apparent reason, sat behind their vehicle and waited. When Frank drove away Bartz followed them down the street. I have seen Officer Bartz on several occasions in our neighborhood. Landfall was his daily route. As far as I know the black station wagon was the only large black station wagon in Landfall. Also the vehicle was parked behind Frank

and Linda's home every day.

3. That two weeks after this incident, I saw bruises, cuts on Frank's face and left arm, after Officer Bartz had assaulted Frank on June 18, 1997. A short time after this happened, Officer Bartz no longer drove through Landfall.

4. That I characterize Officer Bartz's actions as stalking a couple of weeks before Officer Bartz actually assaulted Frank.

5. That so far no one else has contacted me about this incident relating to Officer Bartz and Francis J. Pumper.

THAT FURTHER YOUR AFFIANT SAYETH, BUT NO ONE HAS ASKED.

Signed: /s/

Roger Bilderback

Subscribed and Sworn to before me this 28th day of May, 1999.

/s/

Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000

U.S. COURT OF APPEALS - EIGHT CIRCUIT
APPEAL NUMBER 99-1560
DISTRICT COURT CASE NO. (CIVIL 98-983 DSD/JMM)

FRANCIS J. PUMPER,
PRO SE APPELLANT,

V.

PAUL BARTZ,
APPELLEE.

AFFIDAVIT OF
Witness on Witness List
Lori LeAnn Nguyen

Sworn Testimony of Lori LeAnn Nguyen

I, Lori LeAnn Nguyen, being first duly sworn on oath deposes and states as follows:

1. That I am a witness and I am aware of being on the witness list of a civil matter involving Maplewood Police Officer Bartz and Francis J. Pumper.

2. That I have not been contacted by anyone else relating to this matter.

3. That in June of 1997, I was living in the city of Landfall, and I saw Officer Bartz following Linda and Frank and they were in Linda's black station wagon. At first when I saw this happen, I was on my way home when I saw Linda and Frank talking to Roger Bilderback. At this time the cop was pulled up behind Frank. After that Linda and Frank came to

see me and the cop at that time was still following them. After visiting with me, the cop continued to follow Frank and Linda home, but never pulled them over. He then just left.

4. That a few weeks after this incident, I saw that the same officer who was following them previously assaulted Frank on June 18, 1997.

5. That I do remember I needed work done on my car and Frank could not do the work because his left shoulder was injured.

THAT FURTHER YOUR AFFIANT SAYETH, BUT NO ONE HAS ASKED.

Signed: /s/
Lori LeAnn Nguyen

Subscribed and Sworn to before me this 28th day of May, 1999.

/s/
Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000

GALENA & BECK, P.L.L.P.
Executive Office Center
Suite 402
2785 White Bear Avenue North
Saint Paul (Maplewood), Minnesota 55109-1307

May 8, 1998

Richard Malacko, Esq.
Earl Gray, Esq.
Attorneys at Law
386 N. Wabasha
St. Paul MN 55102

Via facsimile (612) 223-5179
and U.S. Mail

Re: Francis Pumper
Our file no. 3308-01

Dear Counsel:

As you may know, I represented Mr. Francis Pumper with respect to the criminal charges resulting from the June 18, 1997 incident with the Maplewood Police Department. I also served the Notice of Claim upon the City of Maplewood.

Mr. Pumper has stated to me his desire that my fees for representing him be included in any settlement discussions with the City of Maplewood and accordingly he requested that I document them for you. My total fees and expenses for representing Mr. Pumper totaled $1,962.06. As of this date, Mr. Pumper's outstanding bill totals $1,462.06. A copy of the statement card is enclosed. I can provide more detailed billings if necessary.

I may have other information about the case that could be of interest to you. If I can be of any assistance in this

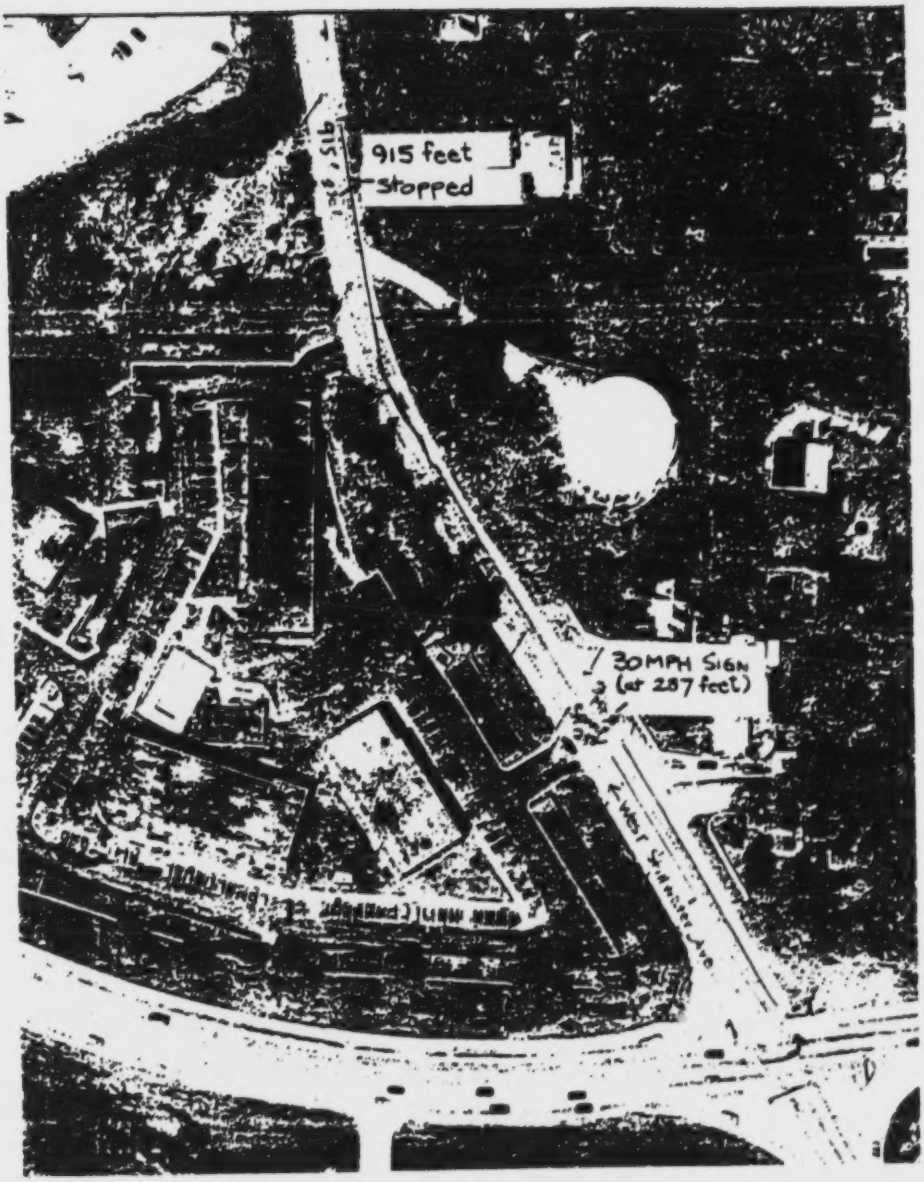
regard or if you have any questions, please do not hesitate to call. Thank you.

Sincerely,

/s/

James A. Marks

JAM/mlr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U.S. COURT OF APPEALS-EIGHTH CIRCUIT
APPEAL NUMBER 99-1560
DISTRICT COURT CASE NUMBER (CIVIL 98-983)

FRANCIS PUMPER,
Pro Se Appellant,
v.

PAUL BARTZ,
Appellee.

Motion of Opposition to Appellee's Motion to Strike or Tamper With the Record

To: Mr. Michael E. Gans, Clerk of Courts
US Court of Appeals
1114 Market Street
St. Louis, MO. 63101

Joseph E. Flynn
2100 Piper Jaffray Plaza
444 Cedar Street
St. Paul, MN. 55101-2160

MOTION

PRO SE appellant Francis Joseph Pumper is requesting denial of appellee's motion to strike any and all information from the record. As per local rule **26.1(a)(1)**; Initial Disclosures. Unless otherwise ordered by the Court in a particular case, the requirements of **Fed.R.Civ.P.26(a)(1)**, relating to "initial disclosures," do not apply to: **(D) other cases involving pro se parties.**

Officer Bartz and his counsel request that the courts

ignore compelling material facts in the record. Bartz's counsel's motion to strike is a superficial, juvenile attempt to solicit law enforcement personnel into aiding and abetting officer Bartz's lies, perjury, and malicious behavior.

At this stage, to remove compelling material facts from the record presented by Pro Se appellant, Francis J. Pumper and to allow appellee Bartz's lies and perjured testimony to stand would be contrary to the rule of law.

Compelling evidence hidden by appellant and appellee's counsel at summary judgement has been introduced to the record by Pro Se appellant, Francis J. Pumper. Judge Doty's order dated December 15, 1998 states "Pumper has presented no evidence that Officer Bartz acted in bad faith or with malice". Please find enclosed exhibit A.

Once again, Pro Se appellant Francis J. Pumper cannot be held accountable for Gray & Malacko's sweeping compelling material facts under the rug and failing to disclose such information at summary judgement.

Respectfully submitted,

Signed: /s/

Francis J. Pumper

Subscribed and Sworn to before me this 4th day of July, 1999.

/s/

Notary Public

Malice. The intentional doing of a wrongful act without just cause or excuse, with an intent to inflict an injury or under circumstances that the law will imply an evil intent. A condition of mind which prompts a person to do a wrongful act willfully, that is, on purpose, to the injury of another, or to do intentionally a wrongful act toward another without justification or excuse. A conscious violation of the law (or the prompting of the mind to commit it) which operates to the prejudice of another person. A condition of the mind showing a heart regardless of social duty and fatally bent on mischief. Cockrell v. State, 135 Tex.Cr.R. 218, 117 S.W.2d 1105, 1109, 1110. Malice in law is not necessarily personal

Aid and abet. Help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission. State v. Fetters, Iowa, 202 N.W.2d 84, 90. It comprehends all assistance rendered by words, acts, encouragement, support, or presence, actual or constructive, to render assistance if necessary. *See* Abet; Abettor; Accessory; Accomplice; Aider and abettor; Harbor.

§ 1621. Perjury generally

Whoever-

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration,

deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section 1746 of title 28, United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined not more than $2,000 or imprisoned not more than five years, or both. This section is applicable whether the statement of subscription is made within or without the United States.

(June 25, 1948, c. 645, 62 Stat. 773; Oct. 3, 1964, Pub.L. 88-619, § 1, 78 Stat. 995; Oct. 18, 1976, Pub.L. 94-550, § 2, 90 Stat. 2534.)

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

vs. HEARING

Francis Pumper, File No. T1-97-622689
Defendant.

The above-entitled matter came on for hearing before the Honorable Donald E. Gross, one of the retired judges of the above Court, on December 8, 1997 at the Maplewood Courthouse, Maplewood, Minnesota.

APPEARANCES:

MR. MARTIN CASTELLO, Assistant City Attorney, appeared on behalf of the plaintiff.

MR. JAMES MARKS, ESQ., appeared on behalf of the defendant.

MR. FRANCIS PUMPER, the defendant herein.

* * *

Reporter: Amy Aldrich

* * *

THE CLERK: Page four, line 11, Francis Joseph Pumper represented by James Marks.

MR. CASTILLO: Your Honor, Martin Castillo for the State.

MR. MARKS: James Marks, Your Honor, for

Mr. Pumper, who is also present in the courtroom.

MR. CASTILLO: Your Honor, we've reached the following agreement; I'm dismissing the driver's license charge, no driver's license, because he did have a driver's license, and the statute says he gets dismissal on that. I'm dismissing the no proof of insurance because he did have proof of insurance. And I've just looked at that, under statute 609.132, we're continuing the remaining two charges for dismissal for one year on the condition no same or similar violations, and until June 19 of 1998. And then there's $50 court costs.

THE COURT: Any objection?

MR. MARKS: No, Your Honor.

THE COURT: You agree to this?

MR. MARKS: Yes.

THE COURT: Continue it, then, under the conditions outlined.

* * *

CERTIFICATE OF REPORTER

I, Amy C. Aldrich, Official Court Reporter for the Second Judicial District of the State of Minnesota, do hereby certify that the foregoing is a true and correct transcript of my stenographic notes as taken at the time and place indicated.

/s/

Dated: December 16, 1997 AMY C. ALDRICH, RPR

ORDER TO REPORT

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CITY OF VIOLATION: MN FILE NO. TI.97.622689
DEFENDANT: FRANCIS J. PUMPER
DEFENDANT'S PHONE NO.

YOU, THE ABOVE NAMED DEFENDANT, ARE ORDERED TO APPEAR ON:

Oct. 15, 1997 at 9:00 am for Jury Trial Judge Smith Rm 153

FAILURE TO APPEAR FOR A SCHEDULED COURT APPEARANCE IS A CRIMINAL OFFENSE UNLESS FAILURE TO APPEAR IS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL. **FAILURE TO APPEAR FOR A PETTY MISDEMEANOR COURT TRIAL CONSTITUTES A PLEA OF GUILTY** UNLESS YOU APPEAR WITHIN 10 DAYS AND SHOW THE FAILURE TO APPEAR WAS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL.

FAILURE TO APPEAR MAY RESULT IN A WARRANT FOR YOUR ARREST

☒ St. Paul Courthouse ..... 15 W. Kellogg Blvd. .....
St. Paul 55102 266-8180
☐ Maplewood Branch...2785 White Bear Ave .....
Maplewood. 55109 777-9111
☐ New Brighton Branch ... 803 5th Ave. NW .....
New Brighton 55112 636-7101
☐ Adult Detention Center Courtroom ..... 14 W. Kellogg Blvd. ..... St. Paul 55102 266-8180

DEFENSE ATTORNEY: James A. Marks

PHONE NO: 770-2400

DATE 10/13/97 JUDGE SMITH HANDED TO DEFT BY Z OR MAILED BY____

ORDER TO REPORT

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CITY OF VIOLATION: MN
FILE NO: TI97622689
DEFENDANT: FRANCIS J. PUMPER
DEFENDANT'S PHONE NO.:

YOU, THE ABOVE NAMED DEFENDANT, ARE ORDERED TO APPEAR ON:

Oct. 13 1997 at 8:45 am for JT Judge T.B.A Rm B

FAILURE TO APPEAR FOR A SCHEDULED COURT APPEARANCE IS A CRIMINAL OFFENSE UNLESS FAILURE TO APPEAR IS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL. **FAILURE TO APPEAR FOR A PETTY MISDEMEANOR COUR TRIAL CONSTITUTES A PLEA OF GUILTY** UNLESS YOU APPEAR WITHIN 10 DAYS AND SHOW THE FAILURE TO APPEAR WAS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL.

FAILURE TO APPEAR MAY RESULT IN A WARRANT FOR YOUR ARREST

☐ St. Paul Courthouse . . . . . 15 W. Kellogg Blvd. . . . . .
St. Paul 55102 266-8180
☒ Maplewood Branch . . . . . 2785 White Bear Ave. . . . . .
Maplewood . 55109 777-9111
☐ New Brighton Branch . . . . 803 5th Ave NW . . . . . .
New Brighton 55112 636-7101

□ Adult Detention Center Courtroom . . . . . 14 W. Kellogg Blvd. . . . . St. Paul 55102 266-8180

DEFENSE ATTORNEY: J. Marks

PHONE NO:

BEST AVAILABLE COPY

A-36

CITY OF Maplewood

STATE OF MINNESOTA - RAMSEY COUNTY DISTRICT COURT

97-948688

CITATION

The undersigned, being duly sworn, upon his oath deposes and says:

On the 18 day of June, 19 97, at _____ hours, at 4 JUNIPER AVE Apt. #

Name FRANCES JOSEPH POMPER Address { St. 6 MADEIRA City MAPLEWOOD State MN Zip Code 55117

Birth Date 12-13-47 D.L. No. _____ State MN Ht. _____ Wt. _____ Race Sex W/M DID. IN THE CITY OF: Maplewood City of Violation

unlawfully (Operate) (Park) License No. 288 FSZ 19 97 State MN Make _____ Color BLA

Location of offense/Meter No.: ST ZILLA AVE / MCKNIGHT

☐ Booked located in the County and State aforesaid, and did then and there commit the following offense: CN # 9X007322

Stat./Ord. No.	Description	GSI ☐
	10 Duration of Parking	
	No part of Vehicle	
	Parked within 100 ft of Intersection	
	20 A in Posted Location	

SPEED: MS 169.14 subd. 2(a)(3) _____ mph IN A _____ mph ZONE

In Accident
☐ PI: Personal Injury
☐ PD: Property Damage
☐ Pedestrian
☐ Fatal
☐ Endanger Life or property
☐ Hazardous Materials Placarded
☐ Commercial Vehicle
☐ Motorcycle

Unsafe Conditions: _____ Specify _____

PARKING VIOLATIONS: ☐ EXPIRED METER ☐ OVERTIME ☐ NO PARK ZONE ☐ RUSH HOUR ZONE ☐ TRUCK ZONE ☐ EXPIRED PLATES ☐ HANDICAP ZONE ☐ FIRE HYDRANT ☐ SNOW EMERG. ORD. ☐ FIRE LANE ☐ OTHER ILLEGAL PARKING

LICENSEE, TO RESPOND TO THIS CITATION WITHIN 14 DAYS AND BE ADVISED THAT, IF THIS A WARRANT FOR MY ARREST WILL BE ISSUED AND NOTICE WILL BE SENT TO THE STATE DRIVER'S LICENSE DIVISION.

☐ HOUSING COURT

City Officer _____ Officer Number 476 City Dept. Maple

WAIT 8 WORK DAYS THEN CALL 612-266-8202 FOR INSTRUCTIONS FOR DISPOSITION OF YOUR CITATION.
You must have the citation number available to get this information.

PROOF OF INSURANCE OR DRIVERS LICENSE must be shown in one of the Violations Bureau locations listed on the back of this citation WITHIN 10 DAYS OF THE DATE OF VIOLATION.

NOTICE: READ BACK OF THIS CITATION CAREFULLY.

REPORT DEFECTIVE METERS BY NOON OF NEXT BUSINESS DAY St. Paul 266-8123 U of M Campus - 626-7275

ORDER TO REPORT

STATE OF MINNESOTA DISTRICT COURT
COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT
CITY OF VIOLATION: MN
FILE NO: TI-97-622689
DEFENDANT: FRANCIS J. PUMPER
DEFENDANT'S PHONE NO:

YOU, THE ABOVE NAMED DEFENDANT, ARE ORDERED TO APPEAR ON:

Dec. 8, 1997 at 8:45 am for jury trial Judge _____ Rm B

FAILURE TO APPEAR FOR A SCHEDULED COURT APPEARANCE IS A CRIMINAL OFFENSE UNLESS FAILURE TO APPEAR IS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL. **FAILURE TO APPEAR FOR A PETTY MISDEMEANOR COURT TRIAL CONSTITUTES A PLEA OF GUILTY** UNLESS YOU APPEAR WITHIN 10 DAYS AND SHOW THE FAILURE TO APPEAR WAS DUE TO CIRCUMSTANCES BEYOND YOUR CONTROL.

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☐ Adult Detention Center Courtroom . . . . . 14 W. Kellogg

Blvd. . St. Paul 55102 266-8180
DEFENSE ATTORNEY: James A. Marks
PHONE NO. 770-2400
Date 10/15/97 Judge SMITH Handed to Deft by Z or mailed by __

The determination of the proper deployment of police and fire protection in the face of impending riots involved the exercise of the municipality's discretion and came within the exception to the allowance of tort claims against the municipality.[40]

It has been held that a complaint stated a valid cause of action based on a breach of duty against a municipality for damages resulting from the death of an inmate from asphyxiation while confined in an unattended municipal lockup by the municipality, imposed by requiring the municipality to have a jailer or custodian present during the time such prisoner was detained, where a notice of claim against the municipality for damages pursuant to the statute was duly filed.[41]

Prior to the abrogation of sovereign immunity, it was held that local governmental units were not liable for: a wrongful arrest by one of their police officers;[42] an assault by one of their police officers even though the officer was known to be of a violent and vicious disposition by the municipal officers appointing him;[43] and for an illegal arrest and false

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[40] Silver v. City of Minneapolis, 284 Minn. 266, 170 N.W.2d 206 (1969) (in action by store owners against city for damage to their building and store, on ground of negligence and failure to provide police and fire protection after it had been requested, there was no tort liability on city). *See* § 2.03 this topic.

[41] McCorkell v. City of Northfield, 266 Minn. 267, 123 N.W.2d 367 (1963).

[42] Gullickson v. McDonald, 62 Minn. 278, 64 N.W. 812 (1895).

[43] Lamont v. Stavanaugh, 129 Minn. 321, 152 N.W. 720 (1915).

imprisonment under the Civil Rights Act.[44]

In making an arrest, an officer is justified in using only such force as is reasonably necessary.[45] Although an officer may be held liable for injuries suffered by others due to a failure to exercise reasonable care in the discharge of this duties,[46] great care must be exercised inlaying down a rule of law pertaining to the liability of law enforcement officers in the performance of their duties in apprehending felons.[47] It is well settled that police officers have no immunity to suits under 42 U.S.C. sections 1983 and 1985 by reason of their official status. However, it is equally well established that police officers have a defense to liability in this type of case if it can be established that they acted with objective probable cause and with subjective good faith.[48]

Police officers are entitled to assert the defense of

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[44] O'Connor v. City of Minneapolis, 182 F.Supp. 494 (D.Minn. 1960). *But see* Monell v. Department of Social Servs, 436 U.S. 658 (1978) (local governmental units may be liable under Civil Rights Act).

[45] MINN. STAT. § 629.32; Rauma v. Lamont, 82 Minn. 477, 85 N.W. 236 (1901). *See also* Murphy v. City of Minneapolis, 292 N.W.2d 751 (Minn. 1980); Schumann v. McGinn, 307 Minn. 446, 240 N.W.2d 525 (1976).

[46] *See* Edberg v. Johnson, 149 Minn. 395, 184 N.W. 12 (1921).

[47] Dyson v. Schmidt, 260 Minn. 129, 109 N.W.2d 262 (1961).

[48] Ames v. Vavreck, 356 F.Supp. 931 (D.Minn. 1973). *See* Lykken v. Vavreck, 366 F.Supp. 585 (D.Minn. 1973); Haaf v. Grams, 355 F.Supp. 542 (D.Minn. 1973).

official immunity to suit alleging that officers' execution of felony stop was discriminatory, provided the stop was not a willful or malicious violation of the plaintiff's rights.[49] The government authority and its law enforcement officers are protected from liability under the doctrine of official immunity if the officers mistakenly obtain and execute a search warrant for the wrong house where there is no evidence that the officers acted in a willful or malicious manner.[50]

Police officers are entitled to qualified immunity with respect to claims under 42 United States Code section 1983, unless the officers have violated clearly established statutory or constitutional rights.[51] The test is whether a reasonably well-trained officer would have known the act was in violation of those rights.[52] Qualified immunity should be recognized if

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[49] State by Beaulieu v. City of Mounds View, 518 N.W.2d 567 (Minn. 1994) (fact issue existed as to whether vehicle stop constituted a willful or malicious violation of plaintiff's rights precluded summary judgment).

[50] Johnson v. Dakota County, 510 N.W.2d 237 (Minn.Ct.App. 1994).

[51] Maras v. City of Brainerd, 502 N.W.2d 69 (Minn.Ct.App. 1993) (complaint properly stated necessary allegations for civil rights claim under § 1983, even though it did not cite statute but rather claimed deprivation of constitutional rights). *See* Elwood v. Rice County, 423 N.W.2d 671 (Minn. 1988); McGovern v. City of Minneapolis, 480 N.W.2d 121 (Minn.Ct.App. 1992).

[52] Elwood v. Rice County, 423 N.W.2d 671 (Minn. 1988); McGovern v. City of Minneapolis, 480 N.W.2d 121 (Minn.Ct.App. 1992).

officers of reasonable competence could disagree on this issue.[53]

The question in determining whether the use of excessive force by a police officer may furnish the basis for federal civil rights claim is whether any reasonable police officer could determine that police officer was sufficiently threatened so as to justify deadly force..[54] Exigent circumstances may justify forcible entry into a building through a part of the building other than a door or window.[55]

Municipalities have discretionary function immunity with respect to the execution of search warrants.[56]

A police officer's decision to engage in a high speed chase is immune from liability under the doctrine of official

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[53] Elwood v. Rice County, 423 N.W.2d 671 (Minn. 1988); McGovern v. City of Minneapolis, 480 N.W.2d 121 (Minn.Ct.App. 1992).

[54] Maras v. City of Brainerd, 502 N.W.2d 69 (Minn.Ct.App. 1993) (where obviously intoxicated victim had knife in presence of officer by never raised it above waist and was barely able to stand, his actions did not justify use of deadly force by officer).

[55] McGovern v. City of Minneapolis, 480 N.W.2d 121 (Minn.Ct.App. 1992) (qualified immunity existed as mater of law where officers with no-knock search warrant used front-end loader to make hole in wall of fortified house, site of drug trafficking; official immunity existed as matter of law where officers were exercising judgment and discretion in executing search warrant and where there was no evidence of maliciousness).

[56] McGovern v. City of Minneapolis, 480 N.W.2d 121 (Minn.Ct.App. 1992).

immunity absent a showing of willful or malicious conduct by the officer.[57] A police officer is not liable for injuries or damage resulting from a high speed chase if the officer's driving is not the...

[57] Lommen v. City of East Grand Forks, 522 N.W.2d 148 (Minn.Ct. App. 1994); Pletan v. Gaines, 481 N.W.2d 566 (Minn. Ct. App. 1992).

GRAY & MALACKO

LAW OFFICES

Suite 1030 Minnesota Building

46 East Fourth Street

St. Paul, Minnesota 55101

(612) 223-5175

Fax (612) 223-5179

March 31, 1998

Clerk of United States District Court
United States District Court, District of Minnesota
202 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

RE: Francis Pumper v. Officer Paul W. Bartz
Civil File No. 98-CV-983 DSD/JMM

Dear Clerk of Court:

I have received notice that Defendant has removed this case to Federal Court. Enclosed for filing please find:

1. Original Summons and Complaint;
2. Affidavit of Service of Summons and Complaint upon Defendant; and
3. Filing fee in the amount of $150.00.

Very truly yours,

/s/

Earl P. Gray

EPG:pkj
enclosures
cc: Pierre N. Regnier

GRAY AND MALACK
LAW OFFICES
46 EAST 4TH ST
1030 MINNESOTA BUILDING
ST PAUL, MN 55101

12766

75-1522/910 50

DATE 3/21/98

PAY TO THE ORDER OF Clerk of Court $ 150.00

One hundred fifty and 00/100 DOLLARS

FIRSTAR BANK
FIRSTAR BANK OF MINNESOTA, N.A.
St. Paul, MN 55101 (612) 784-5100
PRIVATE BANKING

A-45

FOR Pumpler

Carol A Rumple

⑈012766⑈ ⑆091015224⑆ ⑈001097 021⑈

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

CASE NO: 98-CV-983 DSD/JMM

Francis Pumper,

Plaintiff,

vs.

AFFIDAVIT OF PAUL W. BARTZ

Officer Paul W. Bartz,

Defendant.

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

I, Paul W. Bartz, being first duly sworn on oath deposes and states as follows:

1. That I am a licensed peace officer in the State of Minnesota. That I am currently employed as a peace officer for the City of Maplewood and was so employed on June 18, 1997;

2. That this Affidavit is not intended to recount the entire incident involving Plaintiff but only those portions which are relevant to the summary judgment motion;

3. That on June 18, 1997, I was on patrol in the City of Maplewood. That at the intersection of Stillwater Avenue and Stillwater Road I observed a vehicle northbound on Stillwater Road stopped for a red semaphore and a southbound vehicle stopped for a semaphore. That I was stopped at the intersection directly behind the northbound

vehicle. That I further observed that just as the semaphore turned green for both north and southbound traffic, the vehicle driven by the Plaintiff made a left turn to westbound Stillwater Avenue in front of the southbound facing vehicle. That I did not observe any turn signals on the southbound facing vehicle and after the vehicle driven by Plaintiff turned in front of the southbound facing vehicle, the southbound facing vehicle proceeded southbound through the intersection on Stillwater Road. That I believed the actions of Plaintiff in taking a left turn in front of the other car constituted failure to yield contrary to Minn. Stat. § 169.20. That after yielding for the southbound vehicle to proceed through the intersection, I also turned westbound on Stillwater Avenue and observed that Plaintiff's vehicle was traveling in excess of the posted speed limit. That I followed the vehicle driven by the Plaintiff and maintained a consistent distance between the squad car and the vehicle driven by Plaintiff. That the speedometer of the squad car I was driving had been recently calibrated, was working properly and was providing accurate readings of the speed of the patrol car. That in pacing the vehicle driven by the Plaintiff, the Plaintiff was observed on the speedometer of the squad car to be traveling of a rate of speed of 54 miles per hour in a 35 mile per hour zone;

4. That based on my observations and belief that the Plaintiff failed to yield along with my visual observations that Plaintiff was speeding and the speedometer reading which verified that Plaintiff was traveling in excess of the posted speed limit, I activated my overhead red lights on the squad car

to effect a stop of the vehicle Plaintiff was driving;

5. That the stop occurred on Stillwater Avenue east of McKnight Road in the City of Maplewood;

6. That I approached the car and Plaintiff advised me that he did not have his driver's license with him. That Plaintiff began to dig in his glove box. That I requested several times that Plaintiff tell me his first name and he eventually complied telling me that his name was Frank Joseph Pumper, DOB: 12/23/47;

7. That I asked Plaintiff to provide proof of insurance on the vehicle and he indicated that he could not locate any proof of insurance;

8. That pursuant to Minn. Stat. § 171.08, Plaintiff was required to have his driver's license in his immediate possession and to display such driver's license upon demand of a peace officer. That Plaintiff was also required under Minn. Stat. § 169.791, subd. 2, to produce proof of insurance upon demand of a police officer and again Plaintiff failed to do so. That both of these violations are misdemeanors;

9. That I made preliminary inquiries into the identification of Pumper and ran his name and date of birth on the computer. I learned that the Department of Public Safety records indicated the existence of a Francis Joseph Pumper, DOB: 12/23/47;

10. That I also ran the registration of the vehicle and it was not registered to Pumper but was registered to Thomas Prince Gale of 130 South Wheeler Street, St. Paul;

11. That I requested that Pumper step out of the

vehicle and sit in the squad car so that I could further inquire as to his identity and Pumper refused to do so unless I arrested him. That as Pumper did not have any identification and was hostile and uncooperative in regard to my attempts to make further inquiry, I spoke with dispatch and called for backup assistance by another police officer. I learned that Police Officer Johnson of the Maplewood Police Department was dispatched to respond to assist me;

12. That as I called for backup assistance, Pumper stepped out of the vehicle he was driving;

13. That I again asked Pumper to have a seat in the squad car and Pumper refused to do so unless he were arrested;

14. That I believed that I had the right to require Pumper to sit in the squad car during the stop;

15. That it was routine police practice to have an individual to sit in the police car. That I wished to further inquire as to his identification and making such further inquiries while Plaintiff was in the squad car rather than seated in his own vehicle was more conducive to my safety and protection. That my safety concern was heightened due to Plaintiff's initial refusal to step out of the vehicle until I called for backup assistance;

16. That as Pumper had physically resisted my attempts to have him sit in the squad car and place his arm behind his back, and had been verbally non-cooperative, I brought Plaintiff to the ground in order to maintain control of Plaintiff. Although we were on the asphalt service of the street when I made the decision that it was necessary to bring

Plaintiff to the ground, I brought him over to a grassy area next to the curb and brought him to the ground there. My purpose in bringing him over to the grassy area was that taking Plaintiff down on the softer ground would lessen the possibility of any injury to Plaintiff. I believe that placing Plaintiff on the ground to control Plaintiff was reasonable, proper and was in accordance with accepted police custom and practice;

17. That as I knew backup assistance was on the way, I maintained control of Plaintiff on the ground until backup assistance arrived. That in maintaining control of Plaintiff on the ground I held Plaintiff face down on the grass and placed my knee in the area near the base of the neck and between the shoulder blades. That the placement of the knee in such a manner is a routine and accepted method of maintaining control of a suspect. That I maintained Plaintiff in this position in order to protect my own safety. As soon as backup assistance arrived, we got Plaintiff up off the ground and handcuffed him;

THAT FURTHER YOUR AFFIANT SAYETH NOT.

/S/

Paul W. Bartz

Subscribed and Sworn to before me
this 12 day of October, 1998.

/s/

Notary Public
Kristin Wicklace
Notary Public-Minnesota
My Commission Expires Jan. 31, 2000

U.S. COURT OF APPEALS-EIGHTH CIRCUIT
APPEAL NUMBER 99-1560
DISTRICT COURT CASE NO. 98-CV-983 DSD/JMM

Francis J. Pumper,
Appellant Pro Se,

vs. PETITION FOR A REHEARING EN BANC FRAP 40

Officer Paul W. Bartz,
Appellee.

TO: Clerk of United States District Court
U.S.Mail
United States District Court
202 U S Courthouse
300 S. Fourth St.
Minneapolis, MN 55415
Copy:
Defendant's Council
Jardine, Logan & O'Brien, P.L.L.P.

PETITION

I, Francis J. Pumper, request the court permission for rehearing en banc.

1. A. The panel decision conflicts with the decision of the Court of Appeals decision in *Elwood v. Rice County, 423 N.W.2d 671 (1988).*

B. The proceeding involves one or more questions of exceptional importance.

In clarifying the Eighth Circuit Court of Appeals Judgement issued November 1, 1999 on appeal number 99-1560.

Circuit judges, Bowman, Fagg, and Murphy, has affirmed judge Doty's decision to grant Officer Bartz qualified and official immunity based on judge Doty's word "all claims were based on Officer Bartz's allegedly unlawful use of excessive force on plaintiff during a traffic stop". When in fact, those claims are a small fraction of the original complaint in the record.

Judge Doty's decision of December 15, 1998 confirms Pumper's claim of Officer Bartz's malicious behavior and acts of bad faith on pages 22-24. The official and qualified immunity awarded to Bartz as stated by judge Doty:

"Unless the official is guilty of a willful or malicious wrong".

"Pumper may not rely on bare allegations of malice, "but must present specific facts evidencing bad faith".

"Pumper has presented no evidence that officer Bartz has acted in bad faith or with malice".

In the original complaint:

COUNT ONE=Violation of Civil Rights 42 U.S.C. 1983-1988

12. The defendant subjected plaintiff to unlawful deprivation of his rights intentionally and maliciously.

COUNT THREE=Intentional Infliction of Emotional Distress

Those claims are a part of the original complaint involving COUNTS ONE THROUGH SIX

Specific issues ignored by judge Doty in his decision of December 15, 1998 and January 4, 1999. Judge Doty has misstated the claims brought by Pumper under Civil No. 98-983. Judge Doty after being presented with compelling material facts showing Officer Bartz's acts of bad faith and malicious behavior, judge Doty has allowed his previous decision of December 15, 1998 to stand and award Officer Bartz official and qualified immunity and denying Pumper's motion to reconsider with supporting documents stating "the plaintiff has failed to show compelling circumstances why the court should reconsider its order dated December 15, 1998".

Judge Doty's characterization of Officer Bartz's affidavit containing perjury filed in his court under his jurisdiction about case 98-983 stating this was not a compelling reason to reconsider, is argued by Pumper, as perjury by a police officer in Federal court is a crime and is an act in bad faith and malice. The perjury in affidavit filed by Bartz has compounded the intentional infliction of emotional distress caused by officer Bartz's malicious behavior of filing a false police report on June 18, 1997 all this confirms COUNT THREE of original complaint which has been ignored by judge Doty and now the Eighth Circuit Court of Appeals three judge panel of Bowman, Fagg, and Murphy.

Bowman, Fagg, and Murphy's "**unpublished**" opinion does not address the entire original complaint and claims presented by Pumper and makes the error that police officers can commit perjury (a crime) in Federal court and have it characterized as not being a compelling reason to reconsider

and was not the proper forum to address the issue.

Bowman, Fagg, and Murphy's dismissal of Bartz's motion to Strike acknowledges the fact that material presented in briefs by Pumper are part of the record.

> The erroneous and contrary to law decision by judge Doty has been affirmed by Bowman, Fagg, and Murphy was made without considering all of Pumper's claims and original complaint to allow Officer Bartz's malicious behavior intentionally inflict emotional distress by being allowed to present false testimony in Federal court in front of Doty involves an exceptional importance..

As an "unpublished" opinion of Bowman, Fagg, and Murphy dated November 1, 1999 in appeal no: 99-1560 affirming judge Doty's order dated December 15, 1998. That opinion could be used to circumvent the fourth amendment, undermine the Constitutional and Civil rights laws 1983 and 1988 and that is my specific reason for my petition requesting a rehearing en banc.

Everyone should be aware that I am a pro se litigant, have not yet contacted the Civil Liberties Union, complained to the Judicial Board of Ethics about judge Doty, or contacted the Minnesota Bar Association regarding Gray & Malacko's misrepresentation withholding compelling material fact at discovery. Regarding Flynn and Regnier's withholding compelling material fact at discovery, planting false statements in the record, and I have done the best job I can as a pro se appellant to conform with the conflicting three sets of rules

naming Federal Rules of Appellant Procedure, The Eighth Circuit Rules of Appellant Procedure, and the United States District Court for the District Court Local Rules.

The three judge panel of Bowman, Fagg, and Murphy chose not to address motion filed by Pumper regarding Gray & Malacko's failure to file a Withdrawal of Counsel motion as well as the other claims listed in original complaint. Although this appeal of 99-1560 presents documented evidence of Officer Bartz's malicious behavior and criminal acts, neither judge Doty nor Bowman, Fagg, and Murphy to best of my knowledge has notified the proper authorities of crimes listed above. Bartz has lasted one and one half years in the Federal court system without facing consequences of his criminal behavior. I appellant Pumper, have contacted United States Attorney's Office and the FBI and have been informed that a civilian cannot lodge a complaint, it has to be initiated by a judge, a prosecutor, or other official authorities.

This particular appeal is littered with unpublished opinions presented by Flynn and Regnier.

Since the clerk Michael E. Gans informed me to put this in a motion form, I appellant Francis Joseph Pumper moves the panel to remand Civil 98-983 for a jury's decision of genuine issues of material fact present in the record.

I ask the Eighth Circuit Court of Appeals to rehear my case and review materials provided by me before I am forced to seek other forms of resolution. I am enclosing an attachment citing a decision by a Court of Appeals regarding Intentional Infliction of Emotional Distress as this is COUNT THREE of

my original complaint.

Date: Signed: /s/

Francis J. Pumper

Subscribed and Sworn to before me this 10th day of November, 1999.

/s/

Notary Public Lisa Ann Clark
Notary Public-Minnesota
My Commission
Expires Jan. 31, 2005

Q. Did you see that other vehicle that was southbound what it did after you turned?

A. No.

Q. So now you're westbound on Stillwater Avenue, right?

A. Yes.

Q. What happened next?

A. Well, it curves. It curves towards the north within half a block.

Q. All right.

A. And I was going around the curve and I noticed a police car with the lights on behind me.

Q. All right. What did you do? You mean the flashing lights on the top of the car?

A. Yeah.

Q. All right. What did you do?

A. I pulled over.

Q. Okay. What then?

A. I waited for the police officer.

Q. All right. Waited in your vehicle?

A. Yes. In gear with the engine running.

Q. What happened next?

A. Officer Bartz or the police officer asked me for my driver's license and proof of insurance.

Q. Did you have with you your driver's license?

A. Yes.

Q. And did you produce your driver's license?

A. Well, I couldn't find it.

Q. All right. You said you had it with you, but you couldn't find it?

A. Yeah. I always carry it with me.

Q. Well, did you eventually find out where it was?

A. Yes, I did.

Q. Where was it?

A. It was in the seat, in the front seat in the driver's seat of the car. It had a 60/40 seat. They are separated, and it was in-between those two sections. Not the back rest and the bottom of the seat, but the gap between the 60/40. Found it the next day after we got the car out of the tow yard.

Q. All right. Was it just by itself or was it like in a billfold or what?

A. I carry it in a small -- carry it in a small plastic case, but this wasn't -- these cases don't last forever so this -- the other one was white. This is black. Keep it in a plastic case. Not a billfold. It's just a case for my indentification and --

Q. Okay.

A. --insurance and things like that.

Q. So when he asked you for your driver's license what did you tell him?

A. I told him I was looking for it.

Q. All right. And did you produce it to him?

A. No. I couldn't.

Q. And you couldn't produce it because you couldn't find it?

A. I couldn't find it, no.

Q. All right. Then what about the proof of insurance?

A. Well, they would have been -- that was in with my driver's license, but I did begin searching my wife's car above the visor, in the glovebox to see if she had any -- any insurance card or anything like that in the vehicle.

Q. Did you find it?

A. Well, I was ordered to stop.

Q. Stop what?

A. Searching the vehicle.

Q. How long did you look for it?

A. Briefly. Thirty seconds. We're talking about looking for identification of my wife's now.

Q. All right.

A. Right.

Q. You told me that he asked you if you had proof of insurance?

A. Yeah.

Q. And so you were looking for proof of insurance?

A. Uh-huh.

Q. Is that correct?

A. Yeah.

Q. And you weren't able to find it?

A. I searched my pockets and they weren't there.

Q. All right.

A. So then I began searching my wife's car.

Q. Okay. And--

A. And Officer Bartz ordered me to stop searching.

Q. Was he standing right by you during the period of time that you were searching?

A. Right outside the door.

Q. And what happened next?

A. Well, I stopped searching for anything. And he asked for my -- what my name was and address and date of birth and telephone number.

Q. What did you tell him your name was?

A. I told him my name was Frank Pumper.

Q. And what other information did you give him?

A. Gave him my address, Number 4 Juniper Curve, Landfall, 12/23/47, and my phone number 730-7723.

Q. Okay. Then what happened next?

A. Officer Bartz went back to his squad car.

Q. What did you do?

A. I sat there and waited for him in gear, engine running.

Q. And did you continue to look for the insurance?

A. No, I didn't.

Q. Why not?

A. He ordered me to stop.

Q. You were going to do whatever he ordered you to do?

A. Well, from my understanding, that would be a wise thing to do.

Q. Okay. So you just sat there?

A. Yes, I did.

Q. So he went back to his squad car, and how long

a period of time elapsed between the time that he went back to his squad car and he came back to your car?

A. About two minutes. Two, three minutes.

Q. What happened next?

A. Officer Bartz returned to the car and said, Mr. Pumper, how many speeding tickets have you had; began a discussion about my driving history.

Q. All right. And in response to how many speeding tickets you had what did you tell him?

A. I told him I had been driving for 35 years and I asked him when.

Q. Okay. What was his response?

A. He said to begin with the latest, the most current.

Q. Okay. What did you respond?

A. Told him it was last year. December of '96.

Q. All right. And then what?

A. Then he wanted to know about the speeding ticket prior to that one.

Q. What did you tell him?

A. I told him it was years ago.

Q. And that proved to be accurate?

A. Yes.

Q. In December of '96 was accurate?

A. Yes. Would have been 1988 was the one before that.

Q. Then what occurred?

A. And he continues asking the same questions

about more and more speeding tickets, and I stated to Officer Bartz that I knew that when he went back, checked my identity, that my driving record was available to him.

Q. Okay. Then what else occurred then?

A. Well, Officer Bartz asked if I would step out of my car, that he would want me -- that he wanted to talk to me.

Q. And did you do that?

A. No.

Q. Why not?

A. Well, because Officer Bartz didn't charge me anything. He didn't have a citation in his hand. He wasn't going to give me a ticket. I had no idea why he's stopping me. He didn't state why he pulled me over. And as far as I'm concerned the discussion was over unless he wanted to know my pet's name.

Q. Was the pet with you?

A. No.

Q. How did the pet come up?

A. I'm just saying I'd given him all the information he asked for.

Q. And you told him that unless he wanted to find out about your pet?

A. No. What I discussed with Officer Bartz was that if he did not have a citation for me or charging me with anything that I was going to leave.

Q. Okay. So he had asked you to step out of the car, he wanted to talk with you, and you said if you're not going to charge me or give me a citation you're going to leave?

A. Yeah.

Q. What had occurred that made it feel that you shouldn't do what the officer asked you to do? Before you had stopped looking for insurance because he asked you to and now you are not going to get out of the car. Something occur in-between there?

A. Such as?

Q. That's what I am asking. Do you recall something occurring in-between there why you weren't going to obey him now when you were going to do it before?

A. Just a minute. He asked. He didn't order me. I obeyed him before because he ordered me to stop searching my car. He asked me to stop out of my car, he wanted to talk to me. It didn't make any sense because we had been talking. Nothing to discuss.

Q. What did he say when he asked you to get out of the car?

A. Would you step out of your car. I want to talk to you.

Q. All right.

A. It wasn't an order. It was a -- it was a request or he asked. There is a difference.

Q. All right. So what happened next?

A. Officer Bartz called for a backup.

Q. How did you do that?

A. He had a walkie-talkie and he called for a backup.

Q. A hand-held walkie-talkie?

A. I'm not sure. I think it was on his shoulder. I'm not positive.

Q. How do you know that he called for a backup?

A. Because I heard him.

Q. What did he say?

A. He requested a backup.

Q. That's what he said? I'm requesting a backup?

A. Yeah.

Q. Okay. Any more that he said?

A. Well, no.

Q. All right. So now after he requested this backup what happened next?

A. Well, I figured the officer was serious so I stepped out of my car.

Q. What door did you get out?

A. Well, I used the driver's door, actually.

Q. All right. Were you on the shoulder of the road?

A. Pulled over, yeah. The car was.

Q. Was it completely off the driving portion of the roadway?

A. It was on the paved road off up to the curb.

Q. In the parking lane?

A. There is no parking lane.

Q. Okay.

A. It's a two-lane road.

Q. So you are not on the shoulder of the road, you are on the --

A. I was in --

Q. -- right-hand --

A. I was pulled over in the right-hand lane.

Q. Okay.

A. Westbound.

Q. All right. And where was his vehicle?

A. Directly behind me. Five feet behind my vehicle.

Q. Where was Bartz when you stepped out of your car?

A. He was right there.

Q. You mean right next to the door, behind the door or out a --

A. Towards the back about two feet out.

Q. Okay. And did you get out of the car on your own?

A. I got out of the car because I thought Officer Bartz was serious.

Q. No. What I mean was you got out without any assistance by Bartz?

A. He didn't -- he didn't -- he did not assist me. I got out. I opened the door. First put the car in park. Shut off the engine.

Q. Okay.

A. Opened the driver's door and stepped out of the car.

Q. All right. What happened next?

A. Officer Bartz again asked me to step into his car, he'd like to talk to me.

Q. What was the words he used?

A. Would you step into my car. I want to talk to you.

Q. Okay. And did you do that?

A. No.

Q. Why not?

A. Because there was no reason to. We'd been through this discussion. There is nothing else to discuss. He knows who I am. He has my driving record. He has no citation. He's charging me with nothing. I saw no reason to sit in the back of his car.

Q. And did you not think he was serious about stepping into the car?

A. I didn't really -- it didn't really matter if he was or not. I saw no reason to sit in Officer Bartz's car.

Q. Okay. The reason I asked that is before you said you didn't get out of th ecar until you realized he was serious and then you stepped out.

A. About getting out of the car.

Q. Right. But you did not think he was serious about stepping back in the car or did you?

A. No, I didn't. It was a request. It was a -- it was a -- it wasn't an order.

Q. All right. If he had ordered you into the car you would have done so?

A. Yes, sir.

Q. But he had said to you would you step into the car. I want to talk to you?

A. Into my car. He called it his car.

Q. Into my car. I want to talk to you. Okay. So he said would you step into my car. I want to talk to you?

A. Yeah.

Q. And you took that as a request rather than an order?

A. Yes.

Q. And did you respond to that by saying no, I'm not going to, or did you say anything?

A. I said we've been through this before. There is nothing to discuss, and the only way I'm getting into your car is if you arrest me.

Q. All right. What happened next?

A. Officer Bartz grabbed my right arm without saying a word, began trying to force it behind my back, and at the same time he was trying to push me back towards his car.

Q. Okay. Which arm did he grab?

A. My right arm.

Q. Okay. And what position was your right arm in?

A. It was alongside of me.

Q. And when he grabbed it what did he do with it?

A. He grabbed it and tried to push it behind my back and push me at the same time.

Q. All right. What did you do?

A. Well, I became rigid and wouldn't let him push me towards the car, and I made sure that I stayed between my vehicle and him because it is a two-lane road and there is traffic

going by.

Q. What happened next?

A. He wasn't very successful.

Q. Successful in what?

A. In twisting my arm behind my back --

Q. Why not?

A. -- and pushing me. Well, he just wasn't very successful.

Q. Were you resisting his attempts to put your --

A. Yeah.

Q. -- arm behind your back?

A. Yes.

Q. And were you resisting going to the squad car?

A. Yes.

Q. All right. So you think it's because you were resisting that he wasn't successful?

A. Apparently.

Q. What happened next?

A. Well, time was going by and I remembered his partner should be coming right around the bend pretty soon so I let Officer Bartz do whatever he was going to do. I didn't want his partner driving up while Officer Bartz is stanidng in the middle of the street wrestling with my arm.

Q. Why didn't you want his partner driving up while he was wrestling with you.

A. Well, it just wouldn't look right.

Q. For who?

A. For who? For -- probably for me. With two --

with this officer wrestling around and the other officer driving up. So I decided to let Officer Bartz do whatever he was going to do. He never stated what he wanted to do. He never said turn around, put your hand behind your back, you're under arrest or whatever. He just physically grabbed me, attacked me, and began to assault me right out in the street.

Q. This assault consisted of taking your right arm and pushing towards the squad car?

A. Yes. At that time.

Q. All right. What occurred now that you decided Bartz could do what he wanted to?

A. Well, Officer Bartz became vicious. He slammed me on the hood of his car.

Q. Which side of the car? Towards the street or towards the road?

A. On the center of the hood of his car. There is a distance between the back of my car and the front of his car. He slammed me on the hood of his car with my arm pinned behind my back , my right arm.

Q. All right. Now, at that time is your right arm stiff or are you just letting it be put back there?

A. I let him do -- I let him put it back there and slam me on the hood of his car.

Q. Okay. What part of your body hit the hood of the car?

A. My chest and my face.

Q. All right. What happened next?

A. Officer Bartz aggressively ordered me to put my

left arm behind my back.

Q. What did he say when he aggresively ordered?

A. Put your arm behind your back.

Q. Okay.

A. He didn't ask. He ordered.

Q. Did you understand what he meant by that?

A. Exactly.

Q. Did you comply with it?

A. Yes, I did.

Q. What happened next?

A. Officer Bartz let go of my right arm and he grabbed my left arm.

Q. What happened next?

A. He twisted it up behind my back, lifted me off the hood of the car.

Q. All right. What happened next?

A. He turned me towards the north, stepped his foot in front of mine.

Q. To north would have been to the right of your vehicles sa you are facing driving west down the road?

A. To the right.

Q. It would have been to your --

A. Depends on what position you're in. We are heading west and north would be to the left. In waht position are you discussing here?

Q. You are saying you are driving westbound on Stillwater. North would be to your right; is that correct?

A. No.

Q. Okay. Which way would north be if you are driving west on Stillwater?

A. Well, here. I would consider it to be my left.

Q. Okay.

A. But on my right it would -- um, northern -- let's just stick with the north. Northerly direction would be away from the traffic. Southerly direction would be towards the street.

Q. Okay.

A. He pointed me towards a northerly direction.

Q. All right. And what was to the north? The curb?

A. There was a curb.

Q. What was north of the curb?

A. Grass.

Q. All right. What happened then?

A. Officer Bartz tripped me with my arm twisted behind my back and rode me down to the ground, fell on top of me with my arm pinned behind my back. And then he put his knee on the back of my neck and say on my -- on my back until his partner arrived.

Q. And where was Bartz's body with regard to your body at the time he had his knee on you? Was he perpendicular to you?

A. No. He was behind me. One leg was on the side. The other leg was on my neck. One knee was on my neck and as he was kneeling on the ground alongside of me.

Q. Was he facing the same direction as you were?

A. Yes.

Q. So it would have been his left knee that was on your neck and his right leg was alongside of you on the ground?

A. No. I would imagine that his left knee was on the ground. His right knee was on my neck, and my left arm was pinned behind my back, and the other arm, my right arm, was free.

Q. All right. And you said that the other officer arrived?

A. About five, six minutes.

Q. Where with relationship to when his right knee went on your neck did the other officer arrive?

A. What direction?

Q. No. No. Timewise.

A. Five, six minutes.

Q. Okay. What happened during the five to six minutes that he had his left knee on the ground and right knee on your neck?

A. I requested him to put the cuffs on me. I wasn't -- wasn't resisting, and to get off of my neck, that it hurt.

Q. Okay. And you requested that he put the cuffs on you?

A. Yeah. I thought he was going to do that when he had me pinned on the hood of his car.

Q. What was going on when the other officer arrived?

A. What do you mean?

Q. Well, what was happening between you and Officer Bartz when the other officer arrived?

A. I was pinned on the ground with Officer Bartz's knee on my neck. Until Officer Johnson arrived, that's what was going on.

Q. All right. What happened after Officer Johnson arrived?

A. They ordered me to get up.

Q. Were you handcuffed yet?

A. No.

Q. Did you get up?

A. I couldn't.

Q. Why not?

A. I was pinned there so long I couldn't hardly move. My shoulder hurt. My back hurt. And it had been like five, six minutes since he -- this guy wieghs 200 pounds.

Q. All right. So what happened when you couldn't get up?

A. One grabbed one arm and the other grabbed the other and they lifted me off the ground.

Q. Who had which arm?

A. Johnson had right, Bartz had left.

Q. All right. How did they grab you?

A. What do you mean? They lifted me up from my arms here (indicating).

Q. Were they holding onto your biceps?

Summary of the Arguments/Arguments

United States District Court improperly granted summary judgement to Officer Bartz based on the malicious acts committed, false testimony, perjury, malicious intent to injure, false arrest, assault, maltreatment.

Judge Doty exceeded discression by weighing facts and evidence, made credibility determinations, awarded Bartz Official Immunity and Qualified Immunity, ignoring compelling evidence and malicious wrongs committed by officer Bartz. Judge Doty should be removed from this case.

Gray & Malacko failed to provide legal service in good faith, misrepresenting my case and hiding compelling evidence at discovery and failed to follow LR Rules 83.7 (a & C). Judge Doty failed to order the counsel to follow Local Rules above.

Defendant's counsel Regnier & Flynn also hid evidence at discovery, and now are misrepresenting compelling facts in evidence and the record. Dumping at random and citing cases provided in their response brief, having nothing to do with Pumper v. Bartz whatsoever. Planting false statements in the record contradicting earlier statements, reports, and testimony. Also their response brief once again contains many false statements and ignores the issues I have continually tried to present and have recognized by the court.

Officer Bartz has perjured himself, and all parties involved to this point have ignored the compelling evidence establishing perjury. Officer Bartz does not deserve any type of immunity. It is becoming difficult to believe that anyone who reads all the briefs and evidence provided by both parties

could possibly determine that there is no genuine issue for a jury to decide.

There are more witnesses that have not been interviewed or deposed. There is more evidence buried by both parties counsels. Before, during and after discovery.

Maplewood Police Department aided and abetted Officer Bartz in his malicious acts by permitted false police reports to stand for two years and assist in his lies and behavior.

Upon reviewing statutes, nothing was found to indicate it was my responsibility to provide my I.D. and proof of insurance in less than 30 seconds. A little more patience and I Pumper would have found my identification in the front seat of the vehicle I was driving. Which was discovered after the vehicle was removed from the impound lot the next day.

After confirming that I Francis J. Pumper had a valid Driver's License, Officer Bartz did not have any reason to assault and attack and imprison me. Officer Bartz could have issued a citation or arrested me at the time I exited my vehicle. Officer Bartz has a history of not waiting for back up, causing confrontations. Bartz went into a lengthy quiz relating to my driving history, speeding tickets only which is documented in Pumper deposition pages 41 thru 61.

Conclusion

Apparently thus far, there is no deterent or penalty for lying under oath, hiding evidence, planting false statements in the record by officer Bartz and his counsel, not to mention malicious acts and violating numerous laws governing law enforcement personnel's ethical conduct. It also appears to be

impossible to obtain officer Bartz's arrest history for examination by appellant or plaintiff Francis J. Pumper.

REQUEST AND MOTION

Appellant moves and requests that the Eighth Circuit Court of Appeals reverse and remand (Pumper vs. Bartz-civil case #98-983). Appeal # 99-1560 to a Jury Trial on the grounds that there are genuine issues of material fact, as a matter of law, Officer Bartz's claims of immunity are defeated by his malicious acts and perjury. Appellant Francis J. Pumper is entitled to judgment in his favor.

After all I am not asking the Eighth Circuit Court of Appeals to overturn a jury's decision, but a decision by Judge David S. Doty on December 15, 1998 and the order denying the motion to reconsider. I am asking for is to proceed to a jury trial and not grant officer Bartz immunity under these circumstances.

Signed: /s/
Francis J. Pumper

Subscribed and Sworn to before me this 4th day of June, 1999.

/s/
Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000

OFFENSE/INCIDENT/ARREST INUATION REPORT

Case Control No. 97009387

PRELIMINARY: While I was Northbound on Stillwater Avenue at Stillwater Road, I saw above car fail to yield to a car that was coming Southbound on Stillwater.

ACTIONS/OBSERVATIONS:

- The semaphore had just turned green for both North and South lanes of traffic and both the suspect's and the other's car were stopped for the light.
- Suspect's car turned to Westbound Stillwater in front of the other car, failing to yield to the Southbound car's right of way.
- I paced the suspect's car with the speedometer of squad 9942 Westbound on Stillwater at a rate of about 54 MPH in a 35 MPH zone.
- I executed the stop just East of McKnight on Stillwater.
- I approached the car and the driver advised me that he did not have his driver's license with him.
- He started to dig in his glove box and I advised him serveral times to tell me his name first and he eventually complied.
- He told me his name was FRANK JOSEPH PUMPER, DOB 12-23-47.
- I then went to my car to run his name.
- In running his name, I found that his name was actually FRANCIS JOSEPH PUMPER, DOB 12-23-47.
- I noticed on his driving record that his most recent traffic conviction was for speed in Washington County on 12-

20-96.

- I asked him what his most recent conviction was for and he said an expired driver's license tag in 1996.
- I then asked how long ago his last speeding conviction was and he replied a couple of years ago.
- I asked him to step out of his car and to come sit in my car and he refused to do so.
- I then called for a second car and Officer JOHNSON was dispatched.
- At the same time as I was calling for a second car, PUMPER stepped out of his car.
- I again asked him to come sit in my car and he told me that the only way he would come to my car was if I was going to arrest him.
- I then placed him in an escort position to get him to my car and he twice broke free of that.
- I then placed him in an escort position on his right arm for a third time and placed him on the front of my squad.
- He then reached toward me with his left hand and I immediately brought him to the grassy area next to the curb face down.
- I then placed both of his arms in and arm bar, placed my right knee on his back and neck, and called for Oficer JOHNSON to come to my position quickly.
- Officer JOHNSON then handcuffed him, I patted him down, and we placed him in my squad.
- We observed a small cut on the center of PUMPER's left face cheek and saw no other obvious signs of injury.

- Officer JOHNSON waited for the tow and I transported PUMPER to the Annex, where a deputy accompanied us fron the garage to the booking area.
- I mistakenly kept his reading glasses, which were returned to PUMPER later by Sgt. Bergeron.

PUMPER STATED:

- While he was in the holding cell as I was going to the elevator with Ramsey County Deputy JEROME that he wanted me to call him so that he and I could wrestle when I wasn't wearing my uniform.
- Prior to arrest, he stated that his proof of insurance was at home.

DISPOSITION:

- Suspect was booked at the Annex.
- Vehicle towed by Twin Cities's towing.
- Micro cassette of transport placed into cassette locker.

STATE OF MINNESOTA County of Ramsey	DISTRICT COURT Second Judicial District Maplewood Branch
STATE OF MINNESOTA, PLAINTIFF, VS. Francis Joseph Pumper DEFENDANT	NOTICE PURSUANT TO MINN. R. CRIM. P. 7.01.02; DISCLOSURES PURSUANT TO MINN. CRIM.P.7.03; NOTICE OF MOTION AND MOTION FOR DEFENSE. DISCLOSURES PURSUANT TO MINN.R. CRIM.P.7.03

TO: The Above Court and Above Named Defendant and/or Defense Attorney:

1. **PURSUANT TO MINN.R.CRIM.P. 7.01,** the prosecution advises that it has in its possession and intends to introduce at trial against the defendant these types of evidence: (1) X obtained as a result of a search, search and seizure, wiretapping, and/or other electronic or mechanical eavesdropping; (2) X confessions, admissions, and/or statements in the nature of confessions and/or admissions, either inculpatory or exculpatory; (3) X discovered as a result of said procedures (1) and/or (2), above; (4) __ identification procedures, including lineups, photographic displays, and/or observations of the defendant; (5) X scientific tests, experiments, and comparisons; (6) __ other __

2. **PURSUANT TO MINN.R.CRIM.P. 7.02 and 7.03,** the prosecution discloses: (1) the names and addresses of prospective witnesses for the state contained in the police reports on file with the complainti fo attached to this disclosure; (2) the relevant written and/or recorded statements, if any, and the substance of any oral statements made by the defendant and/or any accomplices, if any, attached to the complaint or this notice; (3) physical evidence referred to in the police reports attached to the complaint or to this disclosure; (4) the state may also offer maps or diagrams of the crime or arrest scenes; drivers license records; business records; ohotographs of the victim, the defendant, or others; photographs of the arrest or drime scene, fruits, or instruments; and photographs of lineups or photo displays used by police; (5) any results of any physical or mental examinations and/or tests, scientific tests, comparisons, etc., are contained in the police reports on file with the complaint or attached to this disclosure; (6) the defendant's prior convictions known to the state are contained in the police reports or bail evaluation on file with the complaint or attached to this disclosure; (7) no favorable or exculpatory evidence other than that disclosed is known to the state; (8) any Rule 7.02 evidence and/or notice is incorporated herein by reference; (9) all evidence is available for inspection and/or copying at reasonable times, and with reasonable notice, in prosecutor's office; (10) in domestic violence cases, the state may use prior incidents of domestic abuse.

MORE SPECIFIC INFORMATION CAN BE OBTAINED

BY CONTACTING THE UNDERSIGNED PROSECUTING ATTORNEY

3. PURSUANT TO MINN.R.CRIM.P. 7.03, the prosecution move the court to order that the defense and/or defendant make the disclosures, in writing, to the state set out in Rule 9.02 at least ten (10) days before the date of the Trial; said request is continuing through Trial.

Dated: 08/15/97

HUGHES & COSTELLO

By: /s/

Martin J. Costello Atty. Reg. No. 19100

Rec'd: /s/

Attorneys for the Plaintiff

1230 Landmark Towers

345 St. Peter Street

St. Paul, Minnesota 55102-1637

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION
CASE NO: 98-CV-983 DSD/JMM

Francis Pumper,
Plaitiff, pro se

vs. MOTION FOR RECONSIDERATION AND SUPPORTING DOCUMENTATION

Officer Paul W. Bartz
Defendant.

TO: Clerk of United States District Court Hand Delivered
United States District Court
202 U S Courthouse
300 S. Fourth St.
Minneapolis, MN 55415

Copy:
Defendant's Council
Jardine, Logan & O'Brien, P.L.L.P.

Honorable John M Mason
United States Magistrate Judge

MOTION

I, Francis J. Pumper formally accuse Maplewood police officer Paul W. Bartz of filing a false police report on 6/18/97. Making false statements and withholding information and perjury in an affidavit dated 10/12/98.

Since I am not represented by an attorney, I will begin

with the very confusing intersection at Stillwater Road and Stillwater Avenue. After contracting MINDOT, See attachment A, I received maps indicating road signs and speed limits. It becamse necessary to measure the distance between the intersection of Stillwater Avenue and Stillwater Road westbound to 2307 Stillwater Avenue. 915 feet at 30mph. It takes 24 seconds to travel from the intersection mentioned just west of the driveway at 2307 Stillwater Avenue and come to a complete stop.

At 287 feet there is a speed limit sign of 30 mph **not 35 mph.** The road begins a decline and curves to the right or north westerly in direction.

Officer Bartz states in his police report and in his affidavit that he paced my vehicle with his squad car at 54 mph in a 35 mph zone. Also in his affidavit of October 12, 1998 officer Bartz states for the first time that he was directly behind my northbound vehicle on Stillwater Road waited for southbound vehicle to cross intersection before turning west onto Stillwater Avenue using more time before following my vehicle.

Using up 10-12 sec. before beginning westbound travel leaves 10-12 sec. for Bartz to pace a vehicle at 54 mph and come to a stop within 915' directly west of 2307 Stillwater Ave. officer Bartz is lying.

Officer Bartz withholds information that he did not use radar or other more accurate ways available document the speed of a vehicle in his squad car.

The vehicle was travelling at 30 mph not 54 mph, time

and distance proves that officer Bartz is making false statements.

Moving on to indentification, Officer Bartz does not mention in his police report of 6/18/97 or affidavit of 10/12/98 that a photo I.D. was available to him when he check my driver's license status and record, **see attachment B.** Also, that my name Frank J. Pumper address 4 Juniper Curve, Landfall, MN. 55127 and date of birth 12/23/47. My phone number was given to him. Officer Bartz is again lying about his discussion with me about my driving history.

Officer Bartz request for immunity should not cover perjury and lying under oath, making false statements about what occurred before, during, and after this has been resolved in criminal court and charges were all dropped against me F.J. Pumper on 12/8/97, **see attachment C.**

See attachments D & E, officer Bartz Police report dated 6/18/97 and his affidavit dated 10/12/98.

Perjury is a felony even in a civil case in Federal Court in front of Doty. I, F.J. Pumper do not agree with attorney Gray & Malacko's pleadings against summary judgment, they were indirect, leaving out facts mentioned above and disclosed in attachments. Doty's decision of 12/15/98 is an attempt to circumvent Plaintiff's civil rights, preliminary restraint rules and in general quoting direct from defendant's pleadings. Court's decision of 12/15/98 was based on false testimony and perjury by defendant Bartz to which Plaintiff objects strongly. Judge Doty should reverse his decision of 12/15/98 if not, Doty becomes accessory to perjury which is a felony.

It is unfair that defenant Bartz and his attorneys were permitted to go (venue and judge shopping in Hennepin County for an incredibly bias opinion and judgement).

All defendant Bartz's arguments and Judge Doty's opinions fail because they are based on false testimony and perjury.

The rules of a motion for reconsideration allow only 2 pages (compared to 24 pages of Judge Doty's decision dated 12/15/98), cannot possibly cover everything, however, I do believe what I provided is compelling and should be considered.

Date: December 24, 1998

Signed: /s/

Francis J. Pumper

Subscribed and Sworn to before me this 24th day of December, 1998.

/s/

Notary Public

Lisa Ann Nasby
Notary Public-Minnesota
Ramsey County
My Comm. Expires Jan. 31, 2000